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measure responsible for this. Note the apparent inconsistency in the statements concerning voluntary incorporation of municipalities on pages 12, 24 and 112.

On page 116 we find a statement involving the relations of State and city which should be greatly modified. The writer says: "A city not governed by its own laws and ordinances in its domestic concerns is not a municipality, either by history or etymology. It must have powers or it cannot be a government—powers sufficient to authorize it to make its own laws and enforce them. It is an *imperium in imperio*—a favorite in our complex American system of checks and balances and home rule." Remembering the history of special legislation, and of close control of the cities by the State legislatures in the United States, about the last description that could be applied to the city would be the above. It is true that in a few States autonomy has been approached, but they are very exceptional. The author mentions the States of Missouri and California, p. 141. He might have added Colorado, Minnesota and Washington.

A word may be said concerning the form of the book. It follows the general plan of the Hornbook series, and therefore is adapted for easy reference, and rapid surveys. The citations are full, leading cases being printed in large type. The development of the work in general is painstaking and facile. Yet we may be somewhat surprised to find that statement of the essential qualities of quasi public corporations should be at the end rather than at the beginning of Part III. Objections to the diction and manner of expression in some places may be urged. The errors are probably in part typographical. Description of the process of creating a corporation as one of "concoction," page 12, is barbarous. There is a mystical reference to something called "municipal essence" on page 124, and on page 609 the private corporation is considered with respect to its "subjectivity to special legislative control."

Notwithstanding these objections, which, it should be observed, are for the most part of a minor character, the volume bids fair to be very serviceable.

WATER AND WATER RIGHTS. Three vols. Henry Philip Farnham. Rochester: The Lawyers' Cooperative Publishing Co. 1904. Vol. 1, clxxx. 1-896; vol. 2, xvi, 897-1893; vol. 3, xiv, 1894-2956.

It is not easy to characterize this impressive and somewhat oppressive work. To say that it is an excellent example of the encyclopedic type of law book is to recognize its usefulness to the profession and, at the same time, to put it out of the category of text-books for students. It hardly rises to the dignity of a treatise—it is too inclusive, too loosely woven, too tolerant of conflicting views to meet the requirements of a scientific presentation of the subject with which it deals—and yet it is too well-reasoned (in spots) and too original in treatment to be classed with the digests on special topics which too often masquerade as legal treatises. It is upon the whole a sound and intelligent as well as an honest piece of work, and it fills a real need of the profession. The treatises of Gould, Angell and Pomeroy, all excellent in their way and time, have reached the

stage of decay indicated by the swelling of the notes through successive editions at the expense of the text. Moreover, there was room for a work on waters which should discuss international and interstate rights at one end, and at the other, the modern rules governing irrigation and appropriation in the arid regions of the United States. No previous treatise on the general subject of water-rights has dealt with these matters in any adequate fashion, and their full and, in the main, satisfactory treatment here gives the book a new and increasing field of usefulness.

The reviewer confesses to a partiality in favor of the orthodox classification of water-rights, based upon the public or private character of the waters affected, as against Mr. Farnham's classification of them as "Rights between public and individual" and "Rights between individuals." The latter plan possesses the advantage of permitting the inclusion under the first head of matters usually left for separate treatment—such as canals, municipal water supply, public drainage, etc.—but is not this a matter of gratification to the author rather than of convenience to the user? Whatever advantage may be derived from the increased orderliness and symmetry of the work as a whole would seem to be more than offset by the inevitable confusion which attends the mingling of rights (whether between the public and the individual or between individuals) in private waters with those in public waters—private and public being here employed in the common law sense to denote the ownership of the bed by the riparian owner or the state respectively. Nor is this confusion avoided by the author's device of substituting the natural for the artificial definition which the common law has attached to the term "navigable." Surely Sir Matthew Hale and the Irish court in the *Royal Fishery of the Banne* and Chief Justice Kent in *Palmer v. Mulligan*, 3 Caines, 307, had something more than the right of navigation in mind when they drew the distinction between navigable and non-navigable rivers. And surely it makes confusion worse confounded to use the term "public," as our author habitually does, to describe streams which are subject to the public right of navigation, irrespective of whether they are subject to public or private ownership.

Neither, it is submitted, can the confusion of the public with the state in the classification under consideration be justified. Under the head of "Rights between the public and the individual" we find the rights of riparian owners against the government and similar rights against individual representatives of the public indiscriminately brought together. But these rights are so diverse in their nature and origin that only confusion can result from the attempt to treat them together.

But with all deductions that may be made for improper grouping of material, the book remains at once the most comprehensive and the most thorough treatment that the subject of water-rights has yet received in this country or in England. The cases have been carefully read and digested, the author's criticism is usually sound and often searching and ingenious (an excellent example is his treatment of the Civil Law rule respecting the public character of non-navigable streams, pp. 240-249) and the style of the work, though not always above reproach, is upon the whole clear and interesting. The book

should hold its place in the library of the working lawyer for many years to come.

BRIEF UPON THE PLEADINGS IN CIVIL ACTIONS, AT LAW, IN EQUITY AND UNDER THE NEW PROCEDURE, BY AUSTIN ABBOTT. SECOND AND ENLARGED EDITION. By The Publishers' Editorial Staff. Two Volumes, pp. XXXIII, 2120. The Lawyers' Co-Operative Publishing Company, Rochester, N. Y., 1904.

The first edition appeared in 1891, and having been prepared by the late Austin Abbott it will readily be understood that the work was wisely planned and carefully executed.

The single volume, consisting of about nine hundred pages, and which was one of a series of "Brief Books" treated of Demurrer and Trial upon the Evidence, the two topics being considered together, although by separate statement in different portions of the volume, upon the theory that much repetition would thus be avoided, since the principal questions discussed on demurrer—the sufficiency of the allegations of a pleading to constitute a cause of action or defense, and the jurisdiction of the subject of the action—are also discussed at the trial, and the decision of the court in both cases is governed by the same general principles, except as the application of these principles is modified by the act of the party in going to trial before raising the objection to the pleading.

In preparing the new edition the revisers have wisely retained and followed Mr. Abbott's plan.

As indicated by the title, the work is comprehensive in its scope and is not limited to any one system of procedure, and, although the statements of propositions which are deemed to be established, and the authorities cited in support of such propositions do not always indicate with sufficient clearness whether they are applicable only to pleadings at common law, or in equity, or under the new procedure, or are applicable to pleadings under two or all of the systems, the instances in which any error is likely to arise from this lack of clearness are not numerous.

Some additions have been made to the original sections; new sections have been added covering certain points not treated in the first edition, and a new and important chapter has been added on Amendments of Pleadings. These additions, together with the decisions made since the publication of the first edition have more than doubled the bulk of the work, and made necessary its division into two volumes, one on Demurrer, the other on Issues of Fact.

The work of revision has been well done; treatment of the more important topics, such as demurrer for insufficiency, is exhaustive, and the Table of Contents and Index are full and carefully prepared and will add materially to the usefulness of the edition. On account of such publications as the Century Digest, and others of a somewhat similar character, there is probably not the same necessity for a book of this nature as existed when the first edition appeared. Nevertheless these volumes may be safely commended as a valuable and time-saving aid to the lawyer in the drafting of pleadings and in arriving at a correct decision as to all questions arising on the pleadings whether those questions arise upon the interposition of a demurrer, or during the progress of a trial.